

DIST/OFFICE		DOCKET		FILING DATE		JURY		DOCKET	
YR.	NUMBER	MO.	DAY	YEAR	J	N/S	O	R	NUMBER
1085/4	75	0211	05	29	75	2	870	1	22

JUDGE BRETT

PLAINTIFFS

DEFENDANTS

Fred Marvel and Angela Marvel,
d/b/a Marvel Photo

United States of America

CAUSE

28 USC 1346 (a) (1) -- Suit for refund of employment taxes paid and abatement assessed employment taxes.

ATTORNEYS

EDGAR, EAST & ASSOCIATES
~~Edgar & Manipella~~
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United States Attorney General

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<input type="checkbox"/> CHECK HERE IF CASE WAS FILED IN FORMA PAUPERIS	FILING FEES PAID			STATISTICAL CARDS	
	DATE	RECEIPT NUMBER *	C.D. NUMBER	CARD	DATE MAILED
				JS-5	6-1-75 (7-1-79)
				JS-6	12-1-75 (4-1-80)

DATE	NR.	PROCEEDINGS
5-29-75	1.	Complaint filed, summons issued. mm
5-29-75	2.	Plf's motion for restraining order and preliminary injunction, filed. mm
5-29-75		US Marshal's Service returned and filed. Executed by serving summons on US Attorney General by serving the US District Attorney for the Northern District of Okla., Tulsa, Oklahoma. Mailed 2 copies to the Attorney General, Dept. of Justice, Washington, D. C. by certified mail #707250
6-2-75	3.	^{mm} Brief in Support of Plaintiffs' Motion for Restraining Order & Preliminary Injunction, filed. mm
		MO: IT IS ORDERED BY THE COURT THAT THE DEFENDANT FILE A RESPONSIVE BRIEF WITHIN 10 DAYS TO THE PLAINTIFF'S MOTION FOR RESTRAINING ORDER AND PRELIMINARY INJUNCTION. mm cps mld
6-4-75	4	Deft's appl. for time til 7-28-75 to plead or ans., filed.k
6-5-75	5	Order, filed, granting deft's appl. for time to ans. til 7-28-75. (AEB-J)k cps mld
6-13-75	6	Opposition to mot. for restraining order and preliminary injunction, filed. g
6-13-75	7	Memorandum of law in support of opposition to mot. for restraining order and preliminary injunction, filed. g
7-1-75	MO:	Ordered by the Court that case is set for hearing on Pltf's motion for temporary restraining order & preliminary injunction on 7-8-75, at 10:00 A.M. (AEB-J)b nts mld
7-8-75		Case called for hearing on pltf's mot. for TRO & preliminary injunction. Parties represented. Statements made by parties. Parties stipulate as to irreparable harm for purposes of this hrg. only. Case taken under advisement. Parties are directed to file simultaneous proposed Findings & Conclusions within 10 days. Court to decide matter at that time. (AEB-J)k
7-17-75	8.	Brief of pltfs. in support of mo/restraining order & prel.inj., filed. mm
7-17-75	9	Deft's proposed findings of fact & conclusions of law, filed.k
7-22-75	10.	Mot. for ext. of time to ans., filed by Deft., USA. v (o)
7-23-75	11	Order, filed, granting deft. until 8-25-75 to answer or plead. (AEB-J)g
8-20-75	12.	Defendants' Answer & Counterclaim, filed. mm
8-27-75	13.	Order, filed, denying plaintiffs Motion for Restraining Order & Preliminary Injunction. (AEB-J) mm cps mld
9-3-75	14.	Reply to deft's Counterclaim, filed. lm
9-8-75	MO	Parties are directed to hold a PT conf. on or before 9-18-75 and file PT Order on or before 9-23-75. (AEB-J)k cps by cert ml
9-18-75	15.	Defendant's Interrogatories to Plaintiffs, filed. mm
9-22-75	16.	Deft's Mtn. for Cont., filed. O to J jj
9-24-75	17.	Order, filed, that PT order be fld. by 11-1-75. (AEB-J)v -cps mld.
9-29-75	18.	Entry of Appearance of Wm. W. Guild for deft, filed. lm

continued

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. _____ Sheets
Fred Marvel et al		United States of America	PAGE 2 OF 2 PAGES
DATE	NR.	PROCEEDINGS	
10-2-75	19.	Plaintiff's Interrogatories to Defendant, filed. mm	
10-16-75	20.	Notice of Appeal by the Pltfs of the Order/ ^{of} Denial of Pltfs' Motion for Restraining Order & Preliminary Injunction, filed. mm cpy to USCA and counsel.	
10-20-75	21.	Bond for costs on appeal in the amt. of \$250.00, filed. hm	
10-20-75	22.	Pltfs' motion for ext. of time to ans. deft's interrog., filed. hm	
10-21	23	Order, filed, granting pltf. until 11-17-75 to answer interrogatories. (AEB-J)g. mld	
10-24	24	Designation of record on appeal by pltf., filed. g	
10-30	25	Deft's proposed pretrial order, filed. g	
10-31	26	Mtn. to Strike Case No. 75-C-211 from Nov. PT Docket, filed. jj	
10-31	MO	Case stricken from PT docket til appeal runs. (AEB-J)k <i>per mld</i>	
11-3	27.	Deft's Answers to pltf's interrogs w/Affidavit of William W. Guild, filed. lm	
11-10		Appeal record (1 vol.) sent to USCA. g	
11-17	28.	Motion of Pltfs. for extension of time to answer defts. interrogatories filed. ph <i>o b s</i>	
11-21	29.	ORDER, filed, granting pltfs until 12-1-75 to ans. interrogs. of deft., filed. (AEB-J)lm cps mld	
12-1-75	30.	Pltfs. Mot for Ext. of time to ans. Deft's Interrog, filed. tc <i>0-3</i>	
12-8	31	Order, filed, granting pltfs. til 12-8-75 to ans. interrog. (AEB-J)k cps mld	
12-8	32	Pltfs' answers to interrog., filed.k	
2-7-77	33	Mandate and opinion of USCA, filed and spread of record, affirming Court's Order of 8/27/75. rm	
2-7-77	34	Statement of costs from 10th Circuit, in amt. of \$86.60, filed and taxed in favor of USA and against pltf. (JCS-C1k)rm	
2-10		Original appeal record (1 vol) received from USCA. rm <i>75-1825</i>	
4-1	MO	Parties are directed to hold PT conference on or before 5-13-77 and file a PTO on or before 5-20-77. (AEB-J)k cps mld	
4-14	MO	Upon advice by letter dated 4-8-77 from pltf. counsel that this case is presently pending on petition for writ of certiorari to the Supreme Court of the U. S., IT IS ORDERED that this case is stricken from the pre-trial docket to be reset after disposition by the Supreme Court of the U.S. (AEB-J)k cps mld	
4-20		Letter from 10th Circuit, advising that petition for writ of cert. was filed in Supreme Court and assigned No. 76-1389.rm	

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. <u>75-C-211-B</u>
Fred Marvel		U.S.A.	PAGE ____ OF ____ PAGES
DATE	NR.	PROCEEDINGS	
1977 6-22		Letter from 10th Circuit that petition for writ of cert. was denied on 6/13/77. rm	
9-14	MO	Parties are directed to hold a pre-trial conf. on or before 10-27-77 & file a pre-trial order on or before 11-3-77. (AEB-J) cps mld. ho	
11-3	35	Deft. mot. for ext. of time to file PTO. fld. ho 0 to J.	
11-8	36.	Order, filed, granting parties until 11-18-77 to file a pre-trial order. (AEB-J)k cps mld to movant	
11-17	37	Pltf. proposed PTO with cpy. of letter concerning Deft. approval. fld. ho	
11-29	38	Deft. letter concerning PTO. fld. ho	
1-18-78	MO:	Case is set for jury trial on 2-13-78, at 9:30 A.M. (AEB-J)b nts cert w/affid.	
1-27-78		Ret. of the USM service of Sub. fld. served Mrs. W. S. Ricketts on 1-25-78 in Tulsa, OK; Mae Ellen Warren on 1-25-78 in Tulsa, OK; Jo Shahan on 1-25-78 in Tulsa, OK; Donald Gaines on 1-26-78 in Tulsa, OK; Darlene (Dorsey) Gaines on 1-26-78 in Tulsa, OK; Lucille (Sanders) Towery on 1-25-78 in Tulsa, OK; Sue Foley on 1-26-78 in Tulsa, OK; Rick Cavanaugh on 1-26-78 in Tulsa, OK; Unserved Charlene (Myers) Green. (USM \$19.33)ho	
2-3	MO:	IT IS ORDERED that this case is stricken from Feb. 13, 1978, jury docket & reset on 3-13-78, jury docket at 9:30 A.M. (AEB-J)b nts mld	
3-6	39	Deft. requested voir dire questions to be asked the jury panel, fld. ho	
3-6	40	Deft. requested jury instructions, fld. ho	
3-6	41	Deft. brief, fld. ho	
3-6	42	Pltfs. trial brief, fld. ho	
3-6	43	Pltf's requested instructions, filed. b cpy to MC	
3-8	MO:	IT IS ORDERED that this case is stricken from jury docket of 3-13-78, & reset on the jury docket of 4-10-78. (AEB-J)b nts mld	
4-6	MO:	IT IS ORDERED that this case is stricken from jury docket of 4-10-78, to be reset on the next jury docket. (AEB-J)b nts by phone & ltr	
4-17	MO:	Case is set for jury trial on 5-8-78, at 9:30 A.M. (AEB-J)b nts cert w/affid.	
5-1	MO:	IT IS ORDERED that case is stricken from jury docket of 5-8-78, to be reset on next jury docket. (AEB-J)b nts by phone & ml	
5-19	MO:	Case is set for jury trial on 6-12-78, at 9:30 a.m. (AEB-J)ho nts, cert. w/affid.	
5/26	44.	Mot. of Deft., U.S.A., for continuance from trial docket set for 6/12/78, fld. v	
5/26	45.	Order, filed, that this case is removed from the trial docket of 6/12/78 to be reset on the next jury docket. (AEB-J)v -cps. mld.	
6-13	MO:	Case is set for jury trial on 7-10-78, at 9:30 A.M. (AEB-J)b nts cert w/affid.	
7-6	46	Affid. of Suzanne B. O'Neill, atty. for Deft., re: exhibits, fld. ho	
7-6	47	Deft. witnesses to be called, fld. ho	
7-7	48.	Pltf's witness list, filed. b	
7-7	49.	Pltf's exhibit affidavit, filed. b	
7-10	MO:	Upon stip. of parties, case reld. to Mag. Rizley for jury trial. (AEB-J)rm	
7-11-78	MO:	Jury trial held before Magistrate, upon agreement of parties, 7/10/78 and 7/11/78. Parties announce ready. Before jury brought to ct., hrg. held on pltf. mo/SJ & permanent restraining order. Statements made. Motions overruled. Jury brought to ct., duly empaneled, admonished and sworn. Parties make opening statements. Pltf. presents case in chief w/testimony of witnesses. Pltf. exhibits admitted. Pltf. rests. Deft. presents case in chief w/testimony of witnesses and rests. Pltf. presents rebuttal evidence w/test. of witnesses. Parties rest. (CONTD)	

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT	DOCKET NO. <u>75-C-211-B</u>
Fred Marvel		U.S.A.	PAGE ____ OF ____ PAGES
DATE	NR.	PROCEEDINGS	
1978 7-11	Min:	(contd) Closing arguments. Ct. instructs jury. Bailiff sworn. Jury retires to deliberate at 11:36 a.m., 7/11/78. Jury returns w/verdict 1:40 p.m., 7/11/78. Verdict read in open ct. finding in favor of the pltf. in part and in favor of deft. in part. Jury discharged. Deft. directed to prepare F&R and proposed judg. for submission to Chief Judge. (RSR-Mag) (Linda Walker-CSR) rm	
7-11	50.	Jury Instructions, filed in open court. rm	
7-11	51.	Verdict (special interrogatory), filed in open court. rm	
7-11	---	Pltf. trial exhibits, filed. rm (in file)	
8-2	MO	Leave of court is granted extending time to file proposed Findings and Recommendations and Objections until 8-31-78. (RSR-Mag) k cps by KT	
8/16		Reporters Transcript of Jury Trial befor Honorable Robt. S. Rizley, U.S. Mag. taken on July 10, 1978 by Linda Walker, CSR., filed. jc Vol. I 7-10-78 and Vol. II 7-11-78	
9-1	52.	Pltf's application for extension of time to object to proposed Findings of Fact & Conclusions of Law & ORDER allowing til 9-11-78, filed. (RSR-Mag) b cps by mov.	
9-21	53	F/R of Mag., fld. It is recommended that the Ct. enter judgment for the Pltfs. on those persons whom the advisory jury has found, & the Mag. has recommended, to be independent contractors & on those persons whom Deft. conceded in Para. II(E) of the PTO to be independent contractors, & that judgment be entered for the Deft. on those persons which the advisory jury has found & the Mag. has recommended to be employees of Pltfs. & on those persons whom Pltfs. conceded in para. II(F) of the PTO to be employees. It is further recommended that Deft. submit to Pltf. a schedule showing the sums due as to each employee named in finding of fact #32 & C/L #3 & if the Pltf. & Deft. are in agreement as to the sum due, judgment should be entered for Deft. as to the sums due. If the Pltf. & Deft. cannot agree as to the sums due, then the matter should be set for determination by the Ct. (RSR-Mag.) ho c/m	
11-8	54	Order, F/F & C/L, fld. It is ordered that the Pltfs. mot. for S/J is overruled. It is further ordered that judgment be entered in accordance w/F/R of Mag. based on the advisory opinion of the jury, with leave to the parties to supplement said judgment with the computation of the tax liability of the Pltfs. (AEB-J) ho c/m	
11-8	55	Judgment, fld. & entered, It is ordered that judgment be entered as follows: Judgment be entered in favor of Pltfs. & against the Deft. that Brown; Allen; Courtney; Forbes; Winters; Carpenter; Montana; Collins; Sheehan; Tom; Tobey; Martin; Brackidate; McConnell; Wallace Smith; Parker; Lode; Rodriguez; Rose; Schuldt; Holland; Mary & Robt. Kasold were indp. contractors. Judgment be entered in favor of the Deft. & against the Pltfs. that Warren; Offenbacker; Foley; Towery; Allfred; Briggs; & Cooper were employees of Pltfs. It is further ordered that the parties are granted leave to supplement this judgment with the computation of the tax liability of the Pltfs. (AEB-J) ho c/m	
1-3-79	56	Notice of appeal by pltf. from judg. of 11/8/78, filed. rm-copy to USCA	
1-3	57	Bond for cost on appeal (\$250 previously posted and still in acct.), filed. rm	

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT		DOCKET NO. 75-C-211
Fred Marvel, et al		Cook USA		PAGE 6 OF 3 PAGES
DATE 1979	NR.	PROCEEDINGS		
1-5	58	Deft's notice of appeal from judgment entered on 11-8-78, filed.k c/m		
1-11	59	Order, filed, that the Clerk is directed to designate & incorporate in the record on appeal a copy of the F/F and C/L of the U. S. Mag. Further, that this Order be made a part of the record on appeal to reflect that the parties did not file an obj. to the F/F and C/L recommended by the Mag. and are in violation of Rule 34(d) of the local Court rules. (AEB-J)k cps mld		
2-5	---	Letter from 10th Circuit, assigning Nos. 79-1080 and 79-1081.rm		
2-12	---	Orig. appeal record (3 vols) transmitted to 10th Circuit. rm		
6-18-79	60	Mandate of 10th Circuit, filed and spread of record, dismissing appeal without prej. for lack of appellate jurisdiction. rm		
6-22	--	APPEAL RECORD (3 vols) received from 10th Circuit. rm		
11-9	MO:	CASE TRANSFERRED TO JUDGE THOMAS R. BRETT.(JCS-CLK)jc		
1980 1-18	MO:	CASE SET for Status Report for Friday, 2/8/80 at 11 a.m.(TRB-J)rm for tv		
2/7	-	CASE STRICKEN from 2/8/80 docket re Status Report. Ms. O'Neill is ill. Parties to file Status Reports on or before 2/14/80. v PARTIES THORNTON		
2-15-80	--	STATUS Report recieved in letter form from plaintiff.cs		
3/17		Judgment to the Court. via me v		
Mar.18	61.	JUDGMENT, filed and entered. Ordered that Deft., U.S.A., recover of Pltfs. Fred & Angela Marvel, d/b/a Marvel Photo, \$7,431.11 in tax, \$2,360.04 in penalty, plus \$6,373.86 in interest on the tax and penalty to 3/19/80, plus interest of \$3.22 per day from 3/20/80, to date of judgment, plus statutory interest from date of judgment until paid; and that each party bears its own costs in this action. (TRB-J)v c/m		
5-13	62.	NOTICE OF APPEAL by pltfs. from judg. of 3/18/80. rm - c/m USCA		
5-13	----	DOCKETING & FILING FEES PAID.(\$70.00)rm		
5-14	63.	APPL. of pltf. for order of disbursement of \$250 appeal bond posted 10/20/75. rm (O)		
5-16	64	ORDER of Disbursement, for good cause shown it is ordered clerk of Ct. refund James L. Edgar, Surety on bond.(TRB-J)cs cps/mld.		
5-19	--	LETTER from 10th Cir., assigning No. 80-1497.rm		
5-23	65	DESIGNATION of record on appeal by pltf.rm		
5-23	66	DESIGNATION of record on appeal by deft. rm		

DC 111A
(Rev. 1/75)

CIVIL DOCKET CONTINUATION SHEET

PLAINTIFF		DEFENDANT		DOCKET NO. _____
FRED MARVEL, et al		U.S.A.		PAGE ____ OF ____ PAGES
DATE	NR.	PROCEEDINGS		
5-28-80		APPEAL RECORD (4 vols.) sent to USCA. g		
5-28-80		NOTICE of Transcript Order (Sec. A). cpy to USCA. g		
<u>1983</u> 11-21	67	MANDATE & OPINION recd. from 10th Cir. affirming the judg. of the NDOK. pt (O to J for OK)		
11-30	68	STATEMENT OF COSTS recd. from 10th Cir. in favor of Deft. and against Pltfs. in the amt. of \$171.91. pt		
<u>1984</u> 1-11	--	APPEAL RECORD, Vols. I-IV, recd. from 10th Cir. pt		
2-27	--	EXHIBITS returned to pltf counsel. hm		
<u>1986</u> 5-27	69	GARNISHMENT affidavit of Phil Pinnell. ag s/i,n/c		
6-23	--	U.S. MARSHALS return on Summons, affidavit, notice & claim served Brookside State Bank on 6-19-86, Fees: \$6.00. ag		
6-27	70	ANSWER of garnishee, Brookside State Bank. (nothing held) t		
8-7	--	U.S. MARSHAL RETURN on Execution unable to served Angela Marvel on 7-30-86. ag		
8-7	--	U.S. MARSHAL RETURN on Execution served Fred Marvel on 7-30-86. ag		
9-16	71	AFFIDAVIT of Phil Pinnell for garnishment. ag s/i & n/c		
9-16	--	U.S. MARSHAL RETURN on summons, affidavit, notice & claim served Angela Marvel unable to locate on 8-7-86, Fees: \$2.40. ag		
9-16	--	U.S. MARSHAL RETURN on summons, affidavit, notice & claim unable to serve Fred Marvel on 8-7-86, Fees: \$.0. ag		
9-24	72	ANSWER of garnishee Sr. V. Pres & Cashier of Brookside State Bank, holding \$.0. ag w/n/c		
10-1	73	MOTION of pltfs' to quash garnishee summons & brief in support. ag		
10-1	74	BRIEF in support of #73. ag		
10-10	75	MOTION of deft for ext. of time to file deft's response to pltf's mo/to quash garnishee summons. ag (OtoJ)		
10-16	76	ORDER granting defts mo/for ext. until 10-25-86 to file response to pltf's mo/to quash garnishee summons. ag (TRB-J) c/mvt		
10-24	77	RESPONSE of Govt. to pltfs' mo/to quash garnishee summons. ag		
12-9	78	ORDER overruling pltfs' mo/quash garnishee summons; further ordered that pltfs made a mathematical error in computing amt they believe is due, court finds that amt due & owing to deft is \$25,325.18. (TRB-J) c/m nm Additional amt due is \$9,160.16 making total amt. due to be \$25,325.18.		

